

BEFORE THE TENNESSEE STATE BOARD OF EQUALIZATION

IN RE: Michael R. Bales)
Dist. 8, Map 95O, Group B, Control Map 95O,) Sullivan County
Parcel 10.00, S.I. 000)
Residential Property)
Tax Year 2006)

INITIAL DECISION AND ORDER

Statement of the Case

The subject property is presently valued for proration purposes as follows:

Effective January 1, 2006

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$40,000	\$354,000	\$394,000	\$98,500

Effective July 1, 2006

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$40,000	\$665,100	\$705,100	\$176,275

An appeal has been filed on behalf of the property owner with the State Board of Equalization. The undersigned administrative judge conducted a hearing in this matter on April 11, 2007 in Johnson City, Tennessee. In attendance at the hearing were Michael R. Bales, the appellant, and Sullivan County Property Assessor's representatives Randy Morrell and Ken Collins.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Subject property consists of a single family residence constructed in 2005 and 2006 located on Boone Lake at 426 Lake Point Court in Piney Flats, Tennessee.

The taxpayer contended that subject property should be valued at \$505,100 - \$555,100 by reducing the current appraisal of the improvements by \$150,000 - \$200,000. In support of this position, Mr. Bales testified that his actual construction costs were only approximately \$470,000. In addition, Mr. Bales stated that subject dwelling is insured for \$500,000.¹

The taxpayer also contended that the current appraisal of subject improvements does not achieve equalization. In support of this position, Mr. Bales introduced into evidence photos of and assessment data concerning 20 homes on Boone Lake. Mr. Bales asserted that the 20 homes are more valuable than the subject insofar as they are located in upscale subdivisions and generally have larger lots.

¹ According to the declarations page of the policy, the dwelling is insured for \$500,000 and the dwelling extension up to \$50,000. Both figures represent replacement cost.

The taxpayer also questioned the prorated value of subject property. Mr. Bales maintained that the improvement value should be somewhat lower if the proration was made as of July 1, 2006 as indicated by the assessor's representatives. Moreover, Mr. Bales testified that he did not move into subject residence until August of 2006 and filed a notice of completion on August 13, 2006 with respect to Tenn. Code Ann. § 66-11-143.²

The assessor contended that subject property should remain valued at \$705,100. In support of this position, the assessor's representatives noted that Mr. Bales purchased subject lot on April 25, 2001 for \$200,000 and by his own admission spent approximately \$470,000 to construct the residence. In addition, the assessor's representatives introduced eight sales of homes on Boone Lake which they argued demonstrate that the assessor's appraisals are actually somewhat conservative.

The basis of valuation as stated in Tennessee Code Annotated Section 67-5-601(a) is that "[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values . . ."

After having reviewed all the evidence in the case, the administrative judge finds that the subject property should remain valued at \$705,100 as of July 1, 2006. However, as will be discussed below, the administrative judge finds that the value as of January 1, 2006 should be reduced to \$372,600.

Since the taxpayer is appealing from the determination of the Sullivan County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

The administrative judge finds this case highly unusual insofar as the two matters not in dispute. First, Mr. Bales did not contend that the current total appraised value of \$705,100 necessarily exceeds the market value of subject property. Second, the parties agreed that lots like the subject typically sell for in excess of \$200,000.

The administrative judge finds that what is in dispute concerns whether the valuation of subject improvements should be considered in isolation or whether the admitted undervaluation of the lot must be considered as well. The administrative judge finds that resolution of this issue depends upon whether it is appropriate to consider a traditional equalization argument or whether the focus must deal exclusively with market value.

The administrative judge finds that the State Board of Equalization has historically adhered to a market value standard when setting values for property tax purposes. See Appeals of *Laurel Hills Apartments, et al.* (Davidson County, Tax Years 1981 and 1982,

² This statute deals with protection from unregistered liens.

Final Decision and Order, April 10, 1984). Under this theory, an owner of property is entitled to “equalization” of its demonstrated market value by a ratio which reflects the overall level of appraisal in the jurisdiction for the tax year in controversy. The State Board has repeatedly refused to accept the *appraised* values of purportedly comparable properties as sufficient proof of the *market* value of a property under appeal. For example, in *Stella L. Swope* (Davidson County, Tax Years 1993 and 1994), the Assessment Appeals Commission rejected such an argument reasoning as follows:

The assessor’s recorded values for other properties may suffer from errors just as Ms. Swope has alleged for her assessment, and therefore the recorded values cannot be assumed to prove market value.

Final Decision and Order at 2.

Notwithstanding the foregoing, the State Board of Equalization has, in fact, reduced an appraisal to achieve equalization when systematic undervaluation of an entire neighborhood has been established. See, e.g., *Payton & Melissa Goldsmith* (Shelby Co., Tax Year 2001) wherein the Assessment Appeals Commission ruled in pertinent part as follows:

The assessor points out correctly that mass appraisal is an imprecise art, that of the more than 280,000 residential parcels in Shelby County, some must inevitably be overappraised and others underappraised. As stated in our prior decisions on this point, that a taxpayer can find some who have been underappraised does not confer on the complaining taxpayer a right to be similarly underappraised, and a county board may properly decline to take any action if the only information presented to the board, is that some properties in the county, arguably similar to the complainant’s, are underappraised. But if the county board chooses to act on this information, it should in no event make the situation worse, as surely happened here. Until the assessor has appropriately adjusted all assessments in this neighborhood which appear to suffer from systematic undervaluation, Mr. Goldsmith’s assessment should remain comparable to his neighbors’. The proof indicates that that assessment should be based on an appraised value of \$68 per square foot, or \$113,100.

Final Decision and Order at 4.

Respectfully, the administrative judge finds that the taxpayer introduced insufficient evidence to support an equalization claim. The administrative judge would initially observe that Mr. Bales did not even establish the market value of his home. The administrative judge finds that subject lot would surely command significantly more than \$200,000 on January 1, 2005 given the taxpayer’s April 25, 2001 purchase price of \$200,000. Indeed, many lake lots in East Tennessee sell for amounts far in excess of \$200,000 and have appreciated significantly since 2001. Similarly, the administrative judge finds that Mr.

Bales introduced insufficient evidence to establish whether his contended construction costs of \$470,000 includes all hard and soft costs normally included in a cost approach.³

The administrative judge finds that the 20 “comparables” relied on by Mr. Bales do not constitute sufficient evidence to support an equalization claim for at least three reasons. First, 11 of the comparables are located in Washington County. The administrative judge finds that although *sales* from Washington County might very well be relevant in a sales comparison approach, *assessments* from another county are irrelevant when making an equalization claim for a locally assessed property. Second, the administrative judge finds that no evidence was introduced to establish whether the assessor’s appraisals of the comparables reflect their market values. Third, Mr. Bales did not compare “apples with apples.” The administrative judge finds that Mr. Bales lumped together square footage with significantly different cost and contributory value. For example, subject property has 3,859 square feet of base living area and 1,336 square feet of finished basement. In contrast, the square footage considered by Mr. Bales with respect to the comparables includes base living area, finished basement, finished attic, upper story living area etc. The administrative judge finds such comparisons lack probative value unless converted to a weighted area.

The administrative judge finds that the taxpayer’s equalization argument suffers from the same deficiencies as the one rejected by the Assessment Appeals Commission in *A. L. Mertice Alma Meyer* (Hamilton Co., Tax Year 2001). In that case, the Commission reasoned in pertinent part as follows:

Comparing assessments with a neighbor is equally problematic. Is Mr. Meyer overvalued or Mr. Whitener undervalued? Certainly this case does not present the systematic undervaluation of an entire neighborhood of which the Commission took notice in Appeal of *Peyton & Melissa Goldsmith* (Shelby County, Tax Year 2001, February 27, 2002). Without knowing far more than we are presented here, we can conclude little about the relative undervaluation or overvaluation of Mr. Meyer’s property. This will properly be a concern of the assessor as Hamilton County prepares for its next reappraisal in 2005. Without more specific proof that Mr. Meyer’s property has been overvalued, there is nothing we can do at this time.

Final Decision and Order at 2.

The administrative judge finds that although the taxpayer did not introduce sufficient evidence to establish an equalization claim, the proof strongly suggests that Boone Lake lots in Sullivan County are grossly underappraised. For example, subject lot is appraised at \$40,000 despite selling for \$200,000 in 2001. Similarly, the eight improved sales introduced by the assessor have the following lot values: \$35,200, \$40,000, \$41,700, \$61,800, \$82,100, \$84,500, \$85,000 and \$118,700. Generally speaking, it appears that the

³ Mr. Bales simply testified his construction costs were \$470,000. No documents were introduced into evidence which itemized those costs.

lots appraised from \$82,100 - \$118,700 are double lots. The administrative judge would respectfully recommend that the assessor of property and/or Sullivan County Board of Equalization review Boone Lake lot values and make any necessary adjustments. The administrative judge finds that such adjustments would not constitute unlawful spot reappraisals because assessments that were erroneous to begin with are simply being corrected. See *Mall of Memphis Associates v. State Board of Equalization* No. 02A01-9609-CH-00214 (Tenn. App., August 1, 1997, Western Section), wherein the Courts of Appeals upheld the assessor's revaluation of several shopping malls between reappraisals.

The final issue before the administrative judge concerns the proration of subject property. The administrative judge finds that such assessments are governed by Tenn. Code Ann. § 67-5-603(b) which provides in relevant part as follows:

(b) (1) If, after January 1 and before September 1 of any year, an improvement or new building is completed and ready for use or occupancy, or the property has been sold or leased, the assessor of property shall make or correct the assessment of such property, on the basis of the value of the improvement at the time of its completion, notwithstanding the status of the property as of the assessment date of January 1; provided, that for the year in which such improvement or building is completed, the assessment, or increase in assessment, of the improvement shall be prorated for the portion of the year following the date of its completion.

(2) The state, county or municipal tax collector shall collect taxes on the basis of the revised or corrected assessment as prorated by the assessor.

(3) For the purpose of assessment, an improvement or new building shall be deemed completed and ready for use or occupancy when the structural portion of the building or improvement is substantially completed, even though the interior finish or certain appointments may be left to the choice of a prospective buyer or tenant after consummation of a sale or lease of the property.

(4) Any improvement or new building shall be deemed completed and to have a value for assessment purposes when the real property upon which such improvement or new building is located shall have been conveyed to a bona fide purchaser, or when such new building or improvement has been occupied or used or shall be suitable for occupancy or use, whichever shall first occur. In no event shall any improvement or new building be considered incomplete for valuation or assessment purposes for more than one (1) calendar year immediately following the date on which such construction was commenced.

The administrative judge finds the assessor's selection of July 1, 2006 as the date of proration appropriate. Like Mr. Bales, however, the administrative judge cannot duplicate

the assessor's calculation resulting in an improvement value of \$354,600 as of January 1, 2006.

The administrative judge finds that the entire \$665,100 improvement value should be considered for proration purposes. The administrative judge finds that the \$29,995 worth of special features should be included in the proration calculation as most or all of the itemized features are part of the home as opposed to outbuildings.⁴ This results in an improvement value of \$332,600 after rounding.

The administrative judge would note that a strong argument could be made to increase the value of subject lot and reduce the value of subject improvements while retaining the total appraised value of \$705,100. The administrative judge finds it more appropriate to allow the assessor and/or local board to make such adjustments beginning with tax year 2007. The administrative judge finds that Mr. Bales' overall appraisal will not exceed market value and his land appraisal will remain consistent, albeit too low, with those of his neighbors. The administrative judge should also note that reallocating the values for tax year 2006 will increase Mr. Bales' tax liability to the extent a higher improvement value results.

ORDER

It is therefore ORDERED that the following value and assessment be adopted for tax year 2006:

Effective January 1, 2006

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$40,000	\$332,600	\$372,600	\$93,150

Effective July 1, 2006

<u>LAND VALUE</u>	<u>IMPROVEMENT VALUE</u>	<u>TOTAL VALUE</u>	<u>ASSESSMENT</u>
\$40,000	\$665,100	\$705,100	\$176,275

It is FURTHER ORDERED that any applicable hearing costs be assessed pursuant to Tenn. Code Ann. § 67-5-1501(d) and State Board of Equalization Rule 0600-1-.17.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal “**must be filed within thirty (30) days from the date the initial decision is sent.**”

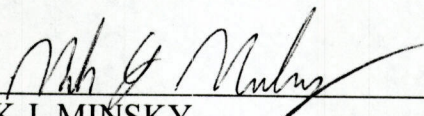
⁴ It is unclear whether the “utility building” valued by the assessor at \$738 constitutes an outbuilding as it was not addressed at the hearing. The administrative judge finds the effect on value de minimis regardless of its treatment.

Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review; or
3. A party may petition for a stay of effectiveness of this decision and order pursuant to Tenn. Code Ann. § 4-5-316 within seven (7) days of the entry of the order.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 1st day of May, 2007.



MARK J. MINSKY
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

c: Mr. Michael R. Bales
Bob Icenhour, Assessor of Property